

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

MARY L. AUSTIN, ET AL.

PLAINTIFF(S)

V.

NO. 4:04-cv-00033-WAP-EMB

THE PROVIDENT BANK, ET AL.

DEFENDANT(S)

REPORT AND RECOMMENDATION

A Pre-Trial Conference was scheduled in this matter for 2:00 PM on January 31, 2007, in the chambers of the undersigned Magistrate Judge pursuant to a notice from the Clerk's office of March 16, 2006, and is scheduled for non-jury trial in Greenville, MS on March 5, 2007, before District Judge W. Allen Pepper. Counsel for plaintiffs and defendants failed to appear for the pre-trial conference without notice or offer of excuse to the Magistrate Judge's office and without submission of an agreed pre-trial order.

Accordingly, this case is in no posture to proceed to trial, and it is the recommendation of the undersigned Magistrate Judge that the case be dismissed pursuant to Federal Rules of Civil Procedure 41 for failure to prosecute. By separate order all counsel of record in this case will be directed to show cause why they should not be sanctioned for their failure to appear at the pre-trial conference and failure to notify the court of the reason for such failure.

The parties are referred to Local Rule 72.2(D) for the applicable procedure in the event any party desires to file objections to the findings and recommendations herein contained. The parties are warned that any such objections are required to be in writing and must be filed within ten days of this date. Failure to timely file written objections to the proposed findings, conclusions and recommendations contained in this report will bar an aggrieved party, except upon grounds of plain error, from attacking on appeal unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Respectfully submitted this 31st of January, 2007.

/s/ E. M. Bogen
UNITED STATES MAGISTRATE JUDGE